

ASSEMBLY BILL

No. 2475

Introduced by Committee on Veterans Affairs (Assembly Members Cook (Chair), Pan (Vice Chair), Atkins, Block, Beth Gaines, Nielsen, V. Manuel Pérez, and Yamada)

February 24, 2012

An act to amend Section 408 of the Military and Veterans Code, relating to military service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2475, as introduced, Committee on Veterans Affairs. Military service protections: real and personal property rights.

Existing law provides legal rights, as specified, for service members in regard to court proceedings, interest liabilities, contracts, eviction proceedings, leases, tax and assessments, life insurance policies, and health insurance.

Existing law prohibits any sale, foreclosure, or seizure of real or personal property subject to a mortgage, or other security, for nonpayment by the service member owner if made during the period of military service or within three months thereafter. Court orders and party agreements are exceptions to this provision. Violation of this provision is a misdemeanor.

This bill would extend the prohibition from 3 months to 9 months after the military service period.

By changing the definition of a crime, this bill would impose a state mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 408 of the Military and Veterans Code
2 is amended to read:

3 408. (a) This section shall apply only to obligations secured
4 by mortgage, trust deed, or other security in the nature of a
5 mortgage upon real or personal property owned by a service
6 member at the commencement of the period of the military service
7 and still so owned by the service member whose obligations
8 originated prior to the person's period of military service.

9 (b) In any proceeding commenced in any court during the period
10 of military service to enforce that obligation as provided in
11 subdivision (a) arising out of nonpayment of any sum due or out
12 of any other breach of the terms of the mortgage, trust deed, or
13 other security occurring prior to or during the period of the service
14 the court may, after hearing and in its discretion on its own motion,
15 and shall, on application to it by the service member or some
16 person on the defendant's behalf, unless in the opinion of the court
17 the ability of the defendant to comply with the terms of the
18 obligation is not materially affected by reason of the defendant's
19 military service, do either of the following:

20 (1) Stay the proceedings for any period as the court deems just.

21 (2) Make any other disposition of the case as may be equitable
22 to conserve the interests of all parties.

23 (c) No sale, foreclosure, or seizure of property for nonpayment
24 of any sum due under any obligation as provided in subdivision
25 (a), or for any other breach of the terms thereof, whether under a
26 power of sale, under a judgment entered upon warrant of attorney
27 to confess judgment contained therein, or otherwise, shall be valid
28 if made during the period of military service or within ~~three~~ *nine*
29 months thereafter, except pursuant to an agreement between the
30 parties, unless upon an order previously granted by the court and
31 a return thereto made and approved by the court.

1 (d) Any person violating this section shall be liable for actual
2 damages, reasonable attorney's fees, and costs incurred by the
3 injured party.

4 (e) Any person who shall knowingly make or cause to be made
5 any sale, foreclosure, or seizure of property, defined as invalid by
6 subdivision (c), or attempts to do so, is guilty of a misdemeanor,
7 and shall be punishable by imprisonment not to exceed one year
8 or by a fine not to exceed one thousand dollars (\$1,000), or both.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.